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STATEMENT OF MICHAEL BOGERT
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BEFORE THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING
INDIAN WATER RIGHTS:
PROMOTING THE NEGOTIATION AND IMPLEMENTATION OF WATER SETTLEMENTS IN INDIAN COUNTRY

March 15, 2012

Chairman Akaka, Vice Chairman Barrasso and distinguished members of the Committee, thank you for the opportunity to appear before you today and discuss promoting the negotiation and implementation of water rights settlements in Indian Country.

I. INTRODUCTION

The perspective I bring to the Committee today is framed by three separate modes of practical experience with Indian water settlements.

First, through the steady discipline and progress of the Snake River Basin Adjudication in my home state of Idaho, we worked with the Nez Perce Tribe, our water user and agriculture community as well as both the Clinton and Bush Administrations to achieve success in our Indian water rights settlement Agreement. The Snake River Water Rights Act of 2004, Pub. L. No. 108-447, 118 Stat. 2809, 3431 (div. J., title X of Consolidated Appropriations Act of 2005), is perhaps the most innovative Indian water rights settlement ever enacted by Congress.

Second, when Governor Kempthorne was asked to serve as Secretary of the Interior, I was invited to join his team and participate in the Bush Administration's management of over eighteen separate Indian water rights settlements.

Third, as a private citizen now observing the continued evolution of these important water matters, the nature and the magnitude of both the problems and the proposed solutions to these settlements are at times astonishing. But they are not insurmountable and there are some things we can discuss to improve the process.

II. DISCUSSION

A. The Problem Set

The path through Indian water rights settlements leads to transformation.

In Idaho, we went from litigation to celebration of our Agreement with the Nez Perce Tribe on the banks of the Boise River. It was inspiring.

In New Mexico, we heard first-hand about the longest-active Federal litigation, the *Aamodt* case (originally filed in 1966!). At one point, we were advised, the case couldn't even progress through litigation because, through the sheer passage of time, the court could not determine *what the appropriate law was* in order to rule on a summary judgment motion. This was confounding.

In Navajo Country, we spoke with "the water haulers," good people who make several round trips a week to put quarters into a machine that dispenses potable water into large receptacles on their trucks for their domestic needs. The images were overpowering.

There are many issues that occupy the daily calendars of Members of Congress. The boots-on-the-ground moments described above support a reasonable proposition that perhaps there is nothing more important in the Federal government than resolving the issue of water rights in Indian Country.

This proposition became personally elucidating when, during a 2007 tribal leaders conference, a Pueblo Governor, upon hearing about how the Aamodt, Taos and Navajo pipeline settlement discussions were enthusiastically proceeding, took to the floor and asked our Federal team when was it going to be his Pueblo's turn to begin work on their water settlement, and by the way, would there be any water left? There was not a really good answer to his question then and there still might not be a good answer to this day.

The problem set before the Committee is simple: whatever water there is, and wherever it is (either above or below ground), there is not enough of it and what water remains is subject to intense competition. Then, whatever water is available on the margins needs to be delivered to Indian Country through a fiscally-sound means.

I believe these issues are too complex to be resolved by any other process than negotiation. It is essential that the process itself and resulting Indian water rights settlements be supported on Capitol Hill. There is no other sensible alternative.

B. What is at Stake in these Settlements

So, what is there to negotiate, and why negotiate in the first place?

As this Committee is well aware, the doctrine established by the U.S. Supreme Court in *Winters v. United States*, 207 U.S. 564 (1907), holds that when a reservation is set aside for an Indian tribe, an implied right to water in an amount sufficient to fulfill the purposes of the reservation is also created. Unsettled *Winters* claims consign uncertainty over

state-law systems of water management. The intersection of these interests and the potential violence to state management of water has been eloquently articulated by this Committee:

> Generally speaking, in states that have adopted systems based on prior appropriation, the ownership and priority of water rights in a particular stream originate with the act of diverting water for beneficial use. Tribal reserved water rights (including the water rights of those who hold allotted trust lands located within Indian reservations) and their dates of priority, on the other hand, arise from the creation of the reservation, and are not dependent on diversion for beneficial use. Because in many areas the establishment of Indian reservations preceded the initiation of most non-Indian water uses, Indian reserved water rights often have priority over the rights of other water users whose rights are based in state law. Accordingly, if Indian tribes were to exercise long-dormant but senior *Winters* rights at times when there are insufficient flows available to satisfy the needs of all users, Indian and non-Indian alike, existing non-Indian water users with rights based on the state-law systems of prior appropriation would often face the subordination of their rights to divert and use water.

S. Rpt. No. 108-389, at 2 (2004). In Indian Country, so much is at stake with infrastructure, actual water, and future funding hanging on a decision to resolve—forever—a tribe's *Winters* rights. These are the biggest decisions tribal leadership will ever make and they certainly should not be taken lightly. There is a mirror image of similar difficult decisions for the non-Federal participants to the same settlement, and often additional pressures of other Federal law such as the Endangered Species Act and the Clean Water Act enter into the calculus.

What are the benefits of a negotiated outcome? During the summer of 2004, then-Governor Dirk Kempthorne provided his views on the Snake River Water Rights Act to this very Committee (attached). For us, the return on our investment in the Nez Perce Agreement was incalculable:

> This agreement protects Idaho's sovereignty by maintaining our system of water law and our existing water rights, which is a process familiar to this committee in traditional water rights settlements.
>
> It provides certainty for the Nez Perce Tribe by resolving their water rights, as well as certainty for our Idaho water user community and important stakeholders our natural resource economy because of the protections contained in the agreement for the next 30 years.
>
> It provides opportunity by setting forth a new way of going about protecting endangered species while preserving access to State and private timber lands for our resource-based industries and the rural communities that depend on Idaho's forests.

Nez Perce-Snake River Water Rights Act: Hearing on S. 2605 Before the S. Comm. on Indian Affairs, 108th Cong. 47 (2004) (statement of Dirk Kempthorne, Governor of Idaho).

When Governor Kempthorne became Secretary Kempthorne, we were truly educated about the legal obligations of a Federal Trustee. In that role we were called to Capitol Hill to account for our management of the pending multiple water settlements (attached),

and, as we did with the Snake River Act, we touted the significant benefits of the negotiation model:

> Through [an Indian water] settlement, parties can agree to use water more efficiently or in ways that obtain environmental benefits, or to share shortages during times of drought. In exchange for settlement benefits, tribes can agree to subordinate use of their water rights so that existing water uses can continue without impairment. Parties to negotiations can agree to terms for mutually beneficial water marketing that could not otherwise occur because of uncertainties in Federal and State law. Settlement negotiations foster a holistic, problem-solving approach that contrasts with the zero-sum logic of the courtroom, replacing abstract application of legal rules that may have unintended consequences for communities with a unique opportunity for creative, place-based solutions reflecting local knowledge and values.

Statement of Michael Bogert, Chairman of the Working Group on Indian Water Settlements, before the House Subcommittee on Natural Resources (April 16, 2008). These observations hold true to this moment.

With this understanding of the benefits should a negotiation effort succeed, what about the negotiating opportunity itself?

If for no other reason, this setting should be exploited because it is one of the precious few opportunities where Congress has afforded non-Federal parties a perfectly lawful place at the negotiating table with Federally-recognized tribes and the United States Government. In addition to a few provisions of the Indian Gaming Regulatory Act where Congress ceded authority to Governors to negotiate Class III gaming compacts directly with gaming tribes, *see, e.g.,* 25 U.S.C. § 2710(d)(3)(a), likewise, the McCarran Amendment diverts the United States and tribes into a State-law process through a rare, express waiver of sovereign immunity. *See* 43 U.S.C. § 666.

There are voices in Indian Country, legitimately perhaps, distrusting of state-law infrastructure as a means to ultimately determine their fate as sovereigns. However, history shows that more often than not, McCarran Amendment proceedings are a unique and valuable relationship-building tool even if, in some instances, the journey begins with a shotgun wedding. Governor Kempthorne often said during our settlement negotiations with the Nez Perce that while the Tribe was, of course, a sovereign tribal government, he also considered them fellow Idahoans.

C. Can this Process Be Better?

The traditional model for the success of Indian water rights settlements consists of several stages.

First, if the settlement discussions germinate in a state with a disciplined general stream adjudication, perhaps a fortunate confluence of timing and ripeness materializes.

Then, if a settlement successfully makes its way through the state law process and becomes embodied in Federal legislation, hopefully there are senior members of the Congressional Delegation to deftly maneuver the legislation through the process.

No small amounts of divine inspiration and perspiration are invested to make Indian water settlements succeed. Hopefully there is always room around the margins for improvement, and the following are a few observations and suggestions on how the process might be made better.

1. Earlier Funding

Much has been debated—as it should—about the cost to the Federal Government of funding Indian water rights settlements. For now, the *Criteria and Procedures for the Settlement of Indian Water Rights Claims*, 55 Fed. Reg. 9223 (March 12, 1990), a policy that was very much a focus of discontent in Indian Country when we were at the Department of the Interior, has withstood the test of time. The *Criteria and Procedures* guide Executive Branch decisions on water settlements and affirm that the taxpayers are entitled to a sound financial resource allocation and a reasonable return on its investment for peace with Indian water rights.

So, while legitimate debate over the cost-justification for these settlements continues, at least one answer to the New Mexico Pueblo Governor mentioned earlier might be with early funding supporting the development of outstanding water rights claims in Indian Country.

There was always a long line outside the door of the Secretary's Indian Water Rights Office for seed funding for lawyers, hydrologists and other experts to assist tribes in developing their claims. Even before formal negotiations commence, a tribe's *Winters* claims can only be ascertained, evaluated and prioritized with this essential seed funding. This early financial support is an essential ingredient and the foundation for the future success of Indian water settlements, and it should be actively supported on Capitol Hill.

2. Trustee Agency Coordination

Our Federal Government can always be better coordinated. Also, it is not necessarily intuitive that the agencies housed at the Department of the Interior *share* trustee responsibility with other Cabinet-level departments, including the Environmental Protection Agency. I served as the Regional Administrator in EPA Region 10 in 2005 and 2006, and the tribal outreach programs there are a model. As the EPA Region with the largest accumulation of Federally-recognized tribes (271), Region 10 is rightfully proud of its work in Indian Country.

I believe more can be done on a cross-Federal agency basis to maximize the resources dedicated to assist developing Indian water rights settlements, through, for example, cooperative programs, interagency staffing agreements, or similar tools. Trustee responsibility in the area of water settlements should not solely be the burden of the Department of the Interior, especially with water quality being mentioned more often in the same breath as water quantity.

3. Is the System Built for *Partial* Settlements?

As was recognized by this Committee in its 2004 report on the Snake River Water Rights Act, the process of resolving Indian water settlements can be arduous. "[T]he general stream adjudication process has proven itself to be an unwieldy, expensive and, above all, slow method for resolving the competing water rights claims in a stream or watershed." S. Rpt. 108-389 at 2. Is there an alternative to the years needed to resolve broader *Winters* claims, by all parties, in Indian Country?

In some cases, non-Federal parties and Tribes may be in an advantageous position to begin negotiating their separate peace with each other in various local watersheds. As noted earlier, unlike Idaho with its Snake River Basin Adjudication (and now the North Idaho Adjudication), other states are less fortunate in their ability to simply call upon its state water law construct to accommodate negotiations between Tribes and other parties to settle outstanding water rights claims.

Certainty is a vital component of an Indian water rights settlement. However, with certainty comes the painstaking process of identifying any and all possible claims to be resolved in exchange for waivers and the blessing of Congress that there was finally "Peace in the Valley."

We should begin a conversation about whether it is possible to make incremental progress on settlements where the parties can resolve key elements of what eventually becomes a much broader discussion of the full satisfaction of a Tribe's *Winters* claims.

For example, if water settlement discussions can be focused on certain divisible components and resolved *prior* to the much tougher and more robust negotiations over broader Federal reserved water rights, then they should proceed with all speed. It does not make sense to wait –perhaps years–for a larger settlement construct to emerge if parties can resolve their differences and provide much needed resources to Indian Country as a result of a partial settlement with a tribe. These "mini-settlements" should be supported as a matter of policy by the Executive Branch and welcomed by Congress if an agreement is appropriately scaled and satisfies the interest of the tribe and the other settling parties.

III. CONCLUSION

In closing, I want to dispel a few myths about Indian water settlements.

A. Myth Number 1: Collaboration is easy.

It is awfully easy to talk about bringing collaborative processes to Indian water settlements, but the warm and fuzzy feelings that surround the term "collaboration" is really a false impression. Collaboration is tougher than it looks and is not for the faint of heart.

Collaboration is tough because it requires sitting at a negotiating table with dislikable people and listening to positions that are antithetical to yours. It is tough because often, one has to retreat and seriously contemplate one's genetic makeup and dearly-held values of the people one represents.

Collaboration sometimes requires battling with people that you once believed were your friends (in Idaho, we had to overcome opposition to the Nez Perce Agreement by the state Farm Bureau).[1] And, collaborative processes are extremely uncertain as to where the ebb and flow of the discussions will lead and when the negotiations will end. In short, collaboration is not for the meek; if is not difficult, it is not being undertaken correctly.

Contrast collaboration to litigation. Dedicating the outcome of a water controversy to the courts is the best resolution if there is simply nothing left to lose. Certainly, there is a time and a place to litigate, but courts cannot address the relationships that may be irreparably injured in the wake of an adverse decision. And, with all due respect to the judicial branch of government, courts are least-equipped to rearrange local and regional economies.

Finally, courts are incapable of awarding the types of settlement benefits that were described earlier in Governor Kempthorne's statement on the Snake River Act. No long-term ESA protection, no delegated timber programs, and no state partnerships with the Tribe. These types of benefits and investment in the future are forgone with litigation.

B. Myth Number 2: There are no heroes in this process.

It is sometimes great sport to bash Federal bureaucracy in an oversight environment, and perhaps there might be an inclination to do the same with respect to water settlements in Indian Country.

My experience is different. Having been a part of this work in Idaho and at the Department of the Interior, the Committee should be advised that there is a dedicated group of career Federal public servants that truly understand what is at stake in these settlements. The day-to-day work that ultimately leads to success in resolving Indian water rights claims is incremental, unseen and unsung. But because it is not conspicuous does not mean that good work is not being accomplished.

Because of the decentralization of the Department of the Interior's settlement assessment and negotiation teams, there are many quiet heroes who make the work of advancing stakeholder development – in Indian Country and elsewhere – as some of the most fulfilling work they do as Trustee agency representatives.

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1. For more on the Nez Perce Agreement, *see* Laurence Michael Bogert, *The Future Is No Place To Place Your Better Days: Sovereignty, Certainty, Opportunity, and Governor Kempthorne's Shaping of the Nez Perce Agreement* 42 IDAHO L. REV. 673 (2006).

A final concluding thought. The Academy Award winning documentary "Man on Wire" is the epic drama of Philippe Petit, a French high wire artist who walked between the World Trade Center Twin Towers in 1974.

The many months of planning this maneuver began with Petit remarking to his compatriots that: "It's impossible that's sure … let's start working." The only thing that kept Petit from his demise was the cable strung between the towers, and yet he dramatically defeated the "impossible."

Some may speak of water rights, water supply, water quality and allocation of water in Indian Country in the near fatal terms that Petit approached his walk between the Twin Towers.

I disagree. There is a choice, but it requires enduring the messy collaborative process and attempting to develop the relationships necessary to give the process a chance. These are opportunities to test the boundaries of the human spirit and they must be chosen.

The challenges with water settlements in Indian Country may seem impossible, but failure will be a *fait accompli* if the hard work is not even attempted.

Attachments

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Calendar No. 777

108TH CONGRESS, 2d Session | SENATE | REPORT 108–389

A BILL TO DIRECT THE SECRETARY OF THE INTERIOR AND THE HEADS OF OTHER FEDERAL AGENCIES TO CARRY OUT AN AGREEMENT RESOLVING MAJOR ISSUES RELATING TO THE ADJUDICATION OF WATER RIGHTS IN THE SNAKE RIVER BASIN, IDAHO, AND FOR OTHER PURPOSES

OCTOBER 7, 2004.—Ordered to be printed

Mr. CAMPBELL, from the Committee on Indian Affairs, submitted the following

R E P O R T

[To accompany S. 2605]

The Committee on Indian Affairs, to which was referred the bill (S. 2605) to direct the Secretary of the Interior and the heads of other Federal agencies to carry out an agreement resolving major issues relating to the adjudication of water rights in the Snake River Basin, Idaho, and for other purposes having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

PURPOSE

The purpose of S. 2605 is to approve the terms of a settlement agreement addressing the water rights of the Nez Perce Tribe of Indians (the Tribe) and its allottees in the Snake River within the State of Idaho, the Tribe's rights of access to and use of water in springs or fountains on Federal lands within a Tribal cession area, monetary and other compensation to the Tribe, as well as several other issues relating to the Snake River Basin such as minimum instream flows and riparian habitat protection and improvement measures for certain streams, all as set forth in a certain "Mediator's Term Sheet" described in greater detail below. S. 2605 also authorizes the appropriation of funds to fulfill the obligations of the United States under the settlement agreement, and directs the Secretary of Interior and the heads of other Federal agencies with obligations under the agreement to take all actions, consistent with the Act, that are necessary to carry out the terms of the agreement.

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF DIRK KEMPTHORNE, GOVERNOR, IDAHO

Mr. Chairman and distinguished members of the committee, it is with great pride that I submit this testimony in support of your consideration of S. 2605, the Snake River Water Rights Act of 2004.

This bill is the result of a monumental collaborative effort by the State of Idaho with the Nez Perce Tribe, the Bush administration, our resource industries, and our water user community.

In Idaho, when you can have the intensity of the negotiations we have had involving water over the last few years and leave the table with a deep, and abiding respect for each other, that is a great accomplishment.

We certainly have a great respect for the Nez Perce Tribe as our partners in this process, and this agreement represents a remarkable success story.

We announced the agreement on May 15, 2004, and before describing what the agreement means to us, let me provide some background on how we arrived at this moment.

In 1985, the Idaho Legislature laid out a process to adjudicate water rights claims in the Snake River Basin, known as the Snake River Basin Adjudication, or the SRBA.

The first claims in the SRBA were filed 2 years later.

As you can imagine, adjudicating—or resolving—all of the competing interests for Idaho water has been a monumental task.

In the beginning, there were nearly 150,000 water rights in question. There were contested claims in 38 of Idaho's 44 counties.

After some early jurisdictional issues were resolved in the SRBA, Idaho is now on the verge of adjudicating the water rights of many of our State's. most important water users, including several of our Native American governments.

Over those years, much work has been done.

With renewed emphasis, more than 80 percent of the claims were resolved by early 2002, the majority of which have taken place in the last 5 years.

Add to the mix the settlement of the claims of the Nez Perce Tribe, and we can truly see the light at the end of the tunnel for finishing up this important water adjudication which has received national attention.

The beginning of the water rights settlement now before your committee began in 1993, when the Nez Perce Tribe filed its claims as part of the adjudication process.

When I became Governor over 5 years ago, one of my priorities was to tackle these claims head-on and come to a much-needed resolution of them through the SRBA.

I directed my Office and the Attorney General's Office to begin negotiations in earnest with all parties.

When we began, our goal was simple.

In the context of negotiating a settlement for the Nez Perce Tribe's water rights, we challenged ourselves to develop a framework that would provide protection not

only for the tribe, but for our most significant water user interests that are impacted by any adjudication of water in our State.

My directive to the State's negotiators to resolve these claims was clear.

Any resolution had to:

- Maintain State sovereignty;
- Protect State water rights; and
- Protect State water law by resisting any federally reserved water rights.

After 5 years of back-and-forth and, frankly, sometimes intense negotiations, we reached an agreement that accomplishes all those goals.

Water is the lifeblood of Idaho, and harnessing this valuable resource has allowed our State to prosper.

The major interest protected in S. 2605 Idaho for is water.

There is no more important issue to the future of our State than water, and this legislation represents one of the single most critical milestones in our State's 114-year crusade to control its water.

What we achieved in this agreement is:

- Sovereignty;
- Certainty; and
- Opportunity for Idaho and her stakeholders to chart their own destiny under the Endangered Species Act.

This is as it should be.

This agreement protects Idaho's sovereignty by maintaining our system of water law and our existing water rights, which is a process familiar to this committee in traditional water rights settlements.

It provides certainty for the Nez Perce Tribe by resolving their water rights, as well as certainty for our Idaho water user community and important stakeholders in our natural resource economy because of the protections contained in the agreement for the next 30 years.

It provides opportunity by setting forth a new way of going about protecting endangered species while preserving access to State and private timber lands for our resource-based industries and the rural communities that depend on Idaho's forests.

Importantly, almost 200 million dollars will be provided to the State, Tribe, and Federal agencies to implement the agreement.

The promise of this agreement is that the farmer in Rexburg, ID will know that he won't lose water that he was counting on to irrigate his crops for decades to come.

The logger in Orofino knows he'll have access to State or private timber lands to provide a livelihood for his family, but under a negotiated framework that protects important fish and wildlife.

And the Port of Lewiston will remain a viable gateway to the world for Idaho products for the foreseeable future.

Many individuals and groups have devoted countless hours to get where we are today.

This process has spanned four administrations in Idaho, and two administrations in the White House.

The State of Idaho, the Nez Perce Tribe, numerous Federal agencies, water user organizations, including the committee of Nine, the Federal Claims Coalition, and some of our State's largest and most important irrigation districts came to the table—many times in my office—to overcome their differences and achieve a solution that's best for the entire State.

I know that as you review the agreement you are asked to approve through this legislation, you will find that it could very well be a national model for future settlements of this type.

Now that we have agreed to these terms, there is still more work ahead of us.

This agreement requires your approval.

We are working closely with Senators Craig and Crapo, and I look forward to partnering with them as this legislation moves through Congress.

State legislation is also needed, and I intend to have a package of bills drafted and ready for the next session of the Idaho Legislature.

The Nez Perce Tribal government also needs to ratify the agreement.

Once those actions are completed, all parties will seek approval by the SRBA court.

Mr. Chairman and members of the committee, this legislation is of no small significance for the State of Idaho and for State, Federal, and tribal government-to-government relations.

When we announced the agreement on May 15 in Boise, I paused and observed the parties who joined us on that day.

I saw them enjoying the moment and each other in celebration of what was achieved through this agreement.

These were parties who were once adversaries.

I thought then as I do now that the alternative—several more years of litigation with the prospect that the ultimate outcome could be resolved by the U.S. Supreme Court—was no alternative at all.

I want to thank Chairman Johnson and his predecessor Sam Penny for their leadership, as well as the commitment from the Nez Perce Tribe to proceed with this settlement.

I greatly appreciate Idaho's water users and countless others who agreed that working together for a solution was a better outcome than litigation and uncertainty.

I want to thank the dedication of the Bush administration; Secretary Norton and her team, including Ann Klee; also John Keys, Commissioner of the Bureau of Reclamation; Bob Lohn of NOAA Fisheries; Clive Strong from the Idaho Attorney General's Office as well as Michael Bogert, Jim Yost, and Jim Caswell from my Office.

Mr. Chairman and distinguished members, I am grateful for the opportunity to describe for you what we think is one of the most exciting developments in the Indian water rights area in our country.

Again, I am proud of what we have accomplished and the partnerships that have developed as a result of this process.

We know that the next few weeks bring great challenges if we are to succeed in this legislative session of Congress.

But with great challenges come great opportunities.

I look forward to working with you in the days ahead to provide you and your staff with the information you need to help us achieve the promise of this agreement.

Thank you.

PREPARED STATEMENT OF ROGER D. LING ON BEHALF OF FEDERAL CLAIMS COALITION UPPER SNAKE RIVER WATER USERS

It is an honor and pleasure to appear today before the Senate Committee on Indian Affairs as a representative of water users in the upper Snake River plain of Southern Idaho in support of S. 2605. A brief review of the efforts of water users in the upper Snake River plain may be helpful to obtain a proper perspective of my comments. In 1987, the State of Idaho commenced what is known as the Snake River Basin Adjudication [SRBA], a general river adjudication of the entire watershed of the Snake River from where it enters the State from Wyoming on the east to where it leaves the State near Lewiston, ID on the west. Under this general adjudication, claims were required to be filed by all water users claiming a right to divert or use water from the Snake River and its tributaries, as well as claims to any reserved water rights by the Federal Government and Indian tribes within the State, including the Nez Perce Tribe. As the result of claims filed in the SRBA by the Federal Government in its own night and as trustee for the Nez Perce Tribe, a group of claimants in the SRBA consisting primarily of irrigation districts, canal companies, water districts and advisory committees of water districts formed a "Federal claims coalition" to address Federal and Nez Perce Tribal claims. In July 1998, claimants represented by the Federal claims coalition, State of Idaho, United States, and Nez Perce Tribe tentatively agreed to proceed with a mediation of Federal and tribal claims. The mediation was ultimately ordered by the District Court of the Fifth Judicial District of the State of Idaho, in and for the county of Twin Falls, which had been designated as the SRBA Court. Mediation ultimately culminated in a "term sheet" dated April 20, 2004, which is the subject matter of S. 2605.

The full significance of the Mediator's Term Sheet and the interests of the Federal claims coalition may not be fully appreciated without some understanding of the Snake River and the interests of water users making a claim to use of the Snake River and its tributaries.

The Snake River basin is general divided into two segments, the first being that portion of the Snake River and its tributaries above Milner Dam near Twin Falls, Idaho, which is a diversion structure used to divert all of the Snake River not previously diverted upstream by senior appropriators. Anadromous fish have never existed in this portion of the Snake River. There are approximately 1,717,580 irrigated acres above this point, which include acres irrigated with ground water which is hydrologically connected to the Snake River. There are approximately 1,042,460

Senator INOUYE. This will be our Christmas present to you, sir.

Mr. JOHNSON. Okay. Thank you very much, Mr. Chairman. If there is anything more?

Senator INOUYE. No; we have another panel here. I would suggest you may want listen to what they have to say.

Mr. JOHNSON. Okay. Thank you very much, Mr. Inouye. Thank you, Senate Committee on Indian Affairs.

Senator INOUYE. Thank you very much, sir.

Our final panel consists of the counsel of the Office of Governor Kempthorne of Boise, ID, Michael Bogert; the counsel of Ling, Robinson and Walker of Rupert, ID, Roger Ling; and the executive director of the Intermountain Forest Association of Coeur d'Alene, ID, Jim Riley.

Shall we begin with Mr. Bogert? Welcome, gentlemen.

STATEMENT OF MICHAEL BOGERT, COUNSEL, OFFICE OF GOVERNOR KEMPTHORNE

Mr. BOGERT. Mr. Vice Chairman, thank you for having us. I bring greetings from Governor Kempthorne, who with great disappointment could not be with the committee today. He is chairing his final day as chairman of the National Governors Association in Seattle. As you know, Senator and others, one of his joys is to come back to the Senate and visit with his former colleagues and friends. He sends his regrets that he could not be with us here today.

Senator INOUYE. Would you tell the Governor we miss him here?

Mr. BOGERT. He will be pleased to hear that, Mr. Vice Chairman.

Mr. Vice Chairman, the agreement that is before this committee today is the result, as you have already heard, of several years of difficult discussions and compromise. As already mentioned by Senator Craig, water is very important in our arid State of Idaho and even more important to our people is the protection of it.

Having said that, the parties to the negotiations over the Nez Perce Tribe's water rights claims were able to reach a settlement agreement, while remaining true to their fundamental beliefs over water and protection of endangered species. There have been times during the past few years when the path we were on seemed to be leading away from the negotiating table and back into the courtroom. Time and again, we decided to come back to the table and keep the discussions moving forward.

The result is that we have formed, and Chairman Johnson touched upon this, stronger bonds with each other and between our respective governments so that the path now leads from a celebration several weeks ago in Boise to our appearance before you today in this committee.

Mr. Vice Chairman, in order to provide a bit more insight into Idaho's perspective on this settlement, let me give you a brief bit of background on the SRBA. In 1985, the Idaho legislature laid out a process to adjudicate the water rights claims that ultimately concluded in this agreement in the Snake River Basin known as the Snake River Basin Adjudication, or as we have been referring to it today, the SRBA.

As you can imagine, adjudicating or resolving all of the competing interests for Idaho water has been a monumental task. In the beginning, there were nearly 150,000 water rights in question, and

we had contested claims of 38 of Idaho's 44 counties. The Nez Perce Tribe, as they were entitled to do under the SRBA, filed their claims in the adjudication.

When the Governor took office over 5 years ago, one of his priorities was to tackle the tribe's claims head-on and come to a much-needed resolution. The Governor's directive to the State's negotiators to make progress on the tribe's claims was clear. Any resolution had to maintain our state sovereignty. It had to protect our State water rights, and it had to protect state water law by resisting any federally-reserved water rights.

After 5 years of back and forth, and frankly sometimes intense negotiations, we reached the agreement that is before you today that has accomplished, we believe, Mr. Chairman, all of these goals. The benefits of this agreement for Idaho are that we have protected our State sovereignty, provided long-term certainty for our agriculture interests in our state, and provided future opportunity for Idaho and her stakeholders to chart their own destiny under the Endangered Species Act.

This agreement protects Idaho's sovereignty by maintaining our system of water law and our existing water rights and water rights holders, which is a process familiar to this committee in traditional tribal water rights settlements. It provides certainty for the Nez Perce Tribe by resolving their water rights, and as mentioned by Senator Craig, the end of protracted litigation through the SRBA, as well as certainty for our Idaho water user community and important stakeholders in our natural resource-based economy because of the protections contained in the agreement for the next 30 years.

It provides opportunity by setting forth a new way of going about protecting endangered species, while preserving access to state and private timberlands for our resource-based industries and the rural communities that depend on Idaho's forests.

We will speak about this more in depth, but one opportunity worth highlighting in particular as a result of this agreement is that in some key parts of our state that support important, ESA-listed fish habitat, irrigators may now have a choice to forego water they would otherwise be entitled to fully divert under their state water rights, in exchange through a program that we are still working on as we speak, for protection under the Endangered Species Act.

Mr. Vice Chairman, this is an innovation in a State like Idaho 5 years ago, if we could have predicted that this would have been a possible outcome, would have boggled our minds. In this instance, there is a real possibility of a win-win for our agriculture community as well as ESA-listed fish.

Finally and importantly, almost $200 million will be authorized in this legislation for the State of Idaho, the tribe and Federal agencies to implement the agreement.

Mr. Vice Chairman and members of the committee, this legislation is of no small significance for the State of Idaho and for state, Federal and tribal government-to-government relations. This process has spanned four Administrations in Idaho and two Administrations in the White House. The state, the Nez Perce Tribe, numerous Federal agencies, water user organizations and some of our

state's largest and most important irrigation districts came to the table, many times at the behest of the Governor in his office, to overcome their differences and achieve a solution that is best for the entire State and our stakeholders.

There has been some discussion about the process. Admittedly, I think everyone who will be before the committee today will testify that the agreement before you is a compromise and thus is inherently imperfect. But we are extremely confident, Mr. Vice Chairman, that the process we undertook was all that we could have asked of ourselves, of the people that we represent and our stakeholders that we are trying to protect and defend.

As we have traveled about the State and discussed this with the people who are wondering what is in this agreement, we have found and we have related stories of the fact that we went beyond our mere negotiating positions in these discussions. We took the time, Mr. Vice Chairman, to understand what our interests were. That is the only reason that we stayed at the table for the 5 years of this process. It was important to us. We understood what was important to the tribe, and the tribe, to their great credit, understood what was important to agriculture in Idaho and our resource-based industries. For that, we have great respect for the tribe.

As this committee reviews the agreement you have asked to approve, we believe you will find that it could very well be a national model for future tribal water settlements of this type. Now that we have agreed to these terms, there is still work ahead. Governor Kempthorne is working closely with Senators Craig and Crapo, and he looks forward to partnering with them, as well as the members of this committee, as this legislation now moves through Congress.

Mr. Vice Chairman, we appreciate the work of the committee staff, particularly Marilyn Bruce, your committee's chief clerk, to help us get ready for the hearing today. Governor Kempthorne wants to again publicly thank Chairman Johnson and his predecessor Sam Penny for their leadership, and again acknowledge publicly the commitment from the Nez Perce Tribe to proceed forward with this settlement.

The Governor greatly appreciates Idaho's water users and the countless others who agreed that working together for a solution was a better outcome than litigation and uncertainty.

Not to belabor the thank yous, Mr. Vice Chairman, but we especially appreciate the efforts of Ann Klee of the Department of the Interior who was the lead Federal negotiator on this, as well as Clive Strong from the Idaho Attorney General's Office who was our lead negotiator as well.

We are grateful for the opportunity to describe for you what we think is one of the most important and exciting developments in the Indian water rights area in the country, and we are proud of what we have accomplished and the partnerships that have developed as a result of this process.

We know that the next few weeks bring great challenges if we are to succeed in this legislative session of Congress, but we also know that with great challenges come great opportunities. We look forward to working with you in the days ahead to provide your and your staff with the information you need to help us achieve the

promise of this agreement so important for the people of Idaho and so important for the tribe.

Thank you, Mr. Vice Chairman.

[Prepared statement of Mr. Kempthorne appears in appendix.]

Senator INOUYE. I thank you very much, Mr. Bogert. I will call on the other members of the panel before asking questions.

May I now call upon Mr. Roger Ling.

STATEMENT OF ROGER LING, COUNSEL, LING, ROBINSON & WALKER

Mr. LING. Thank you, Vice Chairman Inouye. It is an honor and pleasure to appear before the Senate Committee on Indian Affairs, especially you whom I have heard much about, but have not had the pleasure of testifying before your committee prior to today. I appear today as a representative of the water users of the Upper Snake River in southern Idaho in support of S. 2605.

A brief review of the efforts of water users in the Upper Snake Plain may be helpful to obtain a proper perspective on my comments. In 1987, the State of Idaho commenced what is known as the Snake River Basin Adjudication, a general river adjudication of the entire watershed of the Snake River from where it enters the State from Wyoming on the east to where it leaves the State near Lewiston, ID on the west.

Under this general adjudication, claims were required to be filed by all water users, claiming a right to divert or use water from the Snake River and its tributaries, as well as claims to any reserved water rights by the Federal Government and Indian tribes within the state, including the Nez Perce Tribe.

As the result of claims filed in the SRBA by the Federal Government in its own right and as trustee for the Nez Perce Tribe, a group of claimants in the SRBA consisting primarily of irrigation districts, canal companies, water districts and advisory committees of water districts formed a Federal claims coalition to address Federal and Nez Perce tribal claims.

In July 1998, claimants represented by the Federal claims coalition, the State of Idaho, United States, and Nez Perce Tribe tentatively agreed to proceed with a mediation of Federal and tribal claims. Mediation was ultimately ordered by the district court of the Fifth Judicial District of the State of Idaho in and for the county of Twin Falls, which has been designated as the SRBA court, and mediation ultimately culminated in a term sheet dated April 20, 2004, which is the subject matter of S. 2605.

The full significance of the mediator's term sheet and the interests of the Federal claims coalition may not be fully appreciated without some understanding of the Snake River and the interests of water users making a claim for use of the Snake River and its tributaries. The Upper Snake River Basin is generally divided into two segments. The first segment is being that portion of the Snake River and its tributaries above Milner Dam near Twin Falls, ID, which is a diversion structure used to divert all of the Snake River not previously diverted upstream by senior appropriators.

Anadromous fish have never existed in this portion of the Snake River. There are approximately 1,717,580 irrigated acres above this point, which include acres irrigated with groundwater which is

STATEMENT
OF MICHAEL BOGERT
CHAIRMAN OF THE WORKING GROUP ON
INDIAN WATER SETTLEMENTS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE HOUSE COMMITTEE ON
NATURAL RESOURCES
ON INDIAN WATER RIGHTS SETTLEMENTS

APRIL 16, 2008

Chairwoman Napolitano and members of the Subcommittee, I would like to thank you for the opportunity to appear before you today to discuss this Administration's policy on Indian water rights settlements. Tribes increasingly seek quantification of their water rights as a way to confirm and protect their interests in vital and culturally significant water resources and bring much-needed economic development to struggling reservation economies. States increasingly seek quantification of Indian water rights in order to provide certainty for holders of State-based water rights, clarify State authority to manage water resources within their borders, and plan for the future. The water rights that Indians own under the U.S. Supreme Court's *Winters* doctrine have been described by Professor Charles Wilkinson as "a shadow body of law"[1] and are often viewed as looming over existing uses in many water basins of the West where Indian water rights have yet to be decreed. Non-Indian communities, relying upon increasingly scarce water supplies, realize that their water rights cannot be secure if their claims are not compatible with Indian water rights and no agreement has been reached.

My experience shows that instead of being a threatening Sword of Damocles hanging over State water rights regimes, Indian water rights can serve as a needed spur towards cooperation. Indian water rights negotiations have the potential to resolve long-simmering tensions and bring neighboring communities together to face a common future. I saw this happen with the Nez Perce settlement agreement in my home state of Idaho. It is happening today in Arizona, Montana, Nevada, Washington, Utah, and other States with completed Indian water right settlements.

I would like to begin this statement by describing the event held in Arizona one month ago to celebrate the Arizona Water Settlements Act of 2004. The event was attended by almost 400 people from all over the State, ranging from members of the tribes whose water rights were settled through the agreements underlying the act to the mayors of the cities whose municipal supplies were secured to representatives of irrigation districts whose farming rights were protected to U.S. Senator Jon Kyl and other congressional representatives to State and Federal dignitaries. People who had for many years seen each other as rivals for a limited resource came together in celebration of success after a decades-long struggle to craft an agreement that promises to provide sufficient water to

[1] Charles F. Wilkinson, *The Future of Western Water Law and Policy*, *in* INDIAN WATER 1985: COLLECTED ESSAYS 51, 54-55 (Christine L. Miklas & Steven J. Shupe eds., 1986).

meet their future needs and provides a framework for sharing shortages and funding needed investments in a common future.

As noted by the Secretary's remarks on the occasion, delivered by Assistant Secretary – Indian Affairs Carl Artman, the Arizona settlement marked "an important victory in an on-going struggle that will only broaden and intensify in the coming decades." It is undoubtedly true that more communities will struggle with water shortages in the years to come, with drought and climate change exerting pressures to adapt long-term water management to new realities. This Administration, like previous Administrations, believes that when possible, negotiated Indian water rights settlements are preferable to protracted litigation over Indian water rights claims. But achieving a settlement is about much more than seeking Federal funding. It is about compromise, from all sides, on fundamentally held beliefs in the name of producing a workable agreement. It is about newfound understandings between neighbors regarding the ways in which their long-term interests are similar, and the ways in which these interests and visions for the future may be different. It is about sharing the burdens, as well as the benefits, that can arise from investments in infrastructure. It is about facing harsh realities about the total resources that are available and about making decisions that will reverberate for future generations of tribal members and non-Indians alike.

The remainder of this statement will focus on two of the fundamental questions regarding Indian water rights settlements. First, I will discuss the reasons settlements are generally preferable to litigation. Then, I will discuss the policies underlying the Administration's guidance on developing a position on proposed Indian water rights settlements, and explain the need for this framework for negotiating settlements. I will end by discussing the need for closer cooperation between different parts of the Federal government in promoting sound settlement policy.

Settlement versus Litigation

Indian water rights are especially valuable in the West for two reasons: first, Indian water rights cannot be lost due to nonuse, and second, Indian water rights have a priority date no later than the date of the creation of a reservation. Because most reservations were established prior to the settlement of the West by non-Indians, even very senior non-Indian water rights are often junior in priority to Indian water rights. Because tribes have lacked resources to develop their own domestic water supply systems, irrigated agriculture or other industry to make use of their water resources, their ability to use their water rights has been limited. As a result, water that would almost certainly be decreed to tribes if an adjudication were held has often been used for years by neighboring non-Indian interests and communities.

In a typical Western stream adjudication, a presiding judge can decree that a Tribe has a right to a certain amount of water of a certain priority date. Even though a judicial decree provides absolute certainty with respect to who owns what water, when compared with the status quo, adjudication may cast an even greater pall of uncertainty over existing water uses in the system with a junior priority date to the tribal water right because those

users have no way of knowing when the tribe will begin to use its water. A judicial decree does not get "wet water" to tribes, nor does it provide new infrastructure or do anything to necessarily encourage improved water management in the future. Negotiated settlements, on the other hand, can, and generally do, address these critical issues. Through a settlement, parties can agree to use water more efficiently or in ways that obtain environmental benefits, or to share shortages during times of drought. In exchange for settlement benefits, tribes can agree to subordinate use of their water rights so that existing water uses can continue without impairment. Parties to negotiations can agree to terms for mutually beneficial water marketing that could not otherwise occur because of uncertainties in Federal and State law. Settlement negotiations foster a holistic, problem-solving approach that contrasts with the zero-sum logic of the courtroom, replacing abstract application of legal rules that may have unintended consequences for communities with a unique opportunity for creative, place-based solutions reflecting local knowledge and values.

As I have traveled around the country to meet with the tribes and States and local governments that are involved in Indian water rights settlement negotiations, I have heard certain themes repeatedly. First, for tribes, assertion of water rights is a re-affirmation of their sovereignty and a step towards economic self-sufficiency. Second, for States, these negotiations can be an opportunity to resolve outstanding issues that local and state agencies have been unable to conclude or administer successfully in the past. Third, it is clear that many communities favor settlement because they are fed up with top-down governmental decision-making. They want to take their future into their own hands and certainly do not want their future to be decided by the stroke of a judge's pen. Settlement negotiations allow all stakeholders a place at the table and a chance to participate in the decisions that will impact their futures.

For all these advantages, settlement does pose certain risks. Tribes risk being awarded less water than they may be able to obtain through litigation in exchange for other settlement benefits which may be difficult to quantify. Non-Indian communities risk losing a status quo in which they are able to use Indian water without compensating the Tribes. And the Federal government risks being asked to foot the bill for costly water infrastructure projects that will allow existing water users to continue to use the water in the way that built State and local economies while still allowing tribes the right to use water that belongs to them but that they have been unable to use in the past.

The Federal government should provide incentives for stakeholders to consider mutually beneficial settlement rather than rancorous litigation where possible. But there is a line between a reasonably tailored incentive and being placed on the hook for costs that are disproportionate to the benefits of settlement. The next section of this statement discusses the policy guidance that the Executive Branch has used since 1990 to establish a basis for negotiation and settlement of claims related to Indian water resources.

The Role of the *Criteria and Procedures*

There is no cookie-cutter solution to the complex struggles involving tribal, environmental, domestic, industrial, and agricultural claims on limited water supplies that are arising all over the country. However, there are some common challenges in settlements that call for some generally applicable standards to guide the Federal government's participation in settlement negotiations and to inform a decision on whether a proposed settlement should be supported.

When negotiating and evaluating Indian water rights settlements, the Administration follows longstanding policy guidance on Indian water settlements found at 55 Fed. Reg. 9223 (1990), *Criteria and Procedures for the Participation of the Federal Government in Negotiations for the Settlement of Indian Water Rights Claims* (*Criteria*). These *Criteria* have been followed by all Administrations since 1990. Among other considerations for Federal participation in the negotiation of Indian water rights settlements, the *Criteria* provide guidance on the appropriate level of Federal contribution to settlements, incorporating consideration of calculable legal exposure plus costs related to Federal trust or programmatic responsibilities.

The *Criteria* call for Indian water rights settlements to contain non-Federal cost-sharing proportionate to the benefits received by the non-Federal parties, and specify that the total cost of a settlement to all parties should not exceed the value of the existing claims as calculated by the Federal Government. These principles are set out in the *Criteria* so that all non-Federal parties have a basic framework for understanding the Executive Branch's position. The *Criteria* also set forth consultation procedures within the Executive Branch to ensure that all interested Federal agencies have an opportunity to collaborate throughout the settlement process.

The *Criteria* are best viewed as standards that the Government can use to weigh the merits of a settlement. In some cases, a settlement that falls short with respect to one or more of the factors specified in the *Criteria* may be so heavily weighted with respect to other factors that the Administration may decide that the settlement overall should be supported, despite misgivings about some aspect of the proposed agreement. Assessing the value of potential claims against the United States also requires calibration to the particular circumstances and the problems that the settlement seeks to address. Furthermore, as legal doctrines involving not only Indian water rights but also applicable environmental statutes such as the Endangered Species Act and Clean Water Act evolve, this liability assessment must also evolve.

Two of the specifically enumerated factors in the *Criteria* reflect an overarching goal of this Administration in evaluating a proposed settlement, which I think of as "peace in the valley." Criterion 7 holds that "[s]ettlements should be structured to promote economic efficiency on reservations and tribal self-sufficiency." In addition to the inherent value of sovereignty to tribes, successful reservation economies are crucial to long-term good relationships between tribal and non-tribal communities. Settlements that can overcome

cycles of poverty and hopelessness on reservations will do a great deal of good in the long term, helping to revive industry and tourism in places that are really struggling as well as furthering the U.S. goal of Tribal self-sufficiency and sovereignty. Another key criterion, criterion 10, addresses the goal of fostering cooperation more directly, stating that "Federal participation in Indian water rights negotiations should be conducive to long-term harmony and cooperation among all interested parties." This criterion calls upon the federal government to use its influence to provide parties with incentives to work together to identify creative solutions rather than be consumed in endless conflict.

Given Interior's historic role as the architect of many of the Congressionally-enacted policies that led to the development of the West, and as the trustee of Federally recognized tribes, the "peace in the valley" factors remain fundamental to this Administration's evaluation of proposed settlements. But we must also take a hard look at the cost-related factors included in the *Criteria* as well in order to ensure that the interests of U.S. taxpayers are being protected. Settlement should not be a blank check for a region to obtain a Federal subsidy that may fairly be viewed as wasteful or excessive. One of the advantages of the cost sharing requirement under the *Criteria* is that the willingness of settling parties to cost share for a project is a good indicator of how truly invested they are in the proposed solution. It is all too easy to be in favor of a plan that comes at the sole expense of the Federal government and all taxpayers. But a settlement to which many interests are contributing deserves to be taken more seriously and given more favorable treatment by both Executive branch and Congressional reviewers.

The Need for Cooperation among Agencies and Branches of Government

The *Criteria* were written to ensure coordination and common purpose among the relevant executive branch agencies- particularly Interior, the Department of Justice, and OMB, but also sometimes including Indian Health Service, the Forest Service, and others. The procedural provisions of the *Criteria* also reference providing briefings for Congress consistent with the Administration's negotiation position on settlements.

As a practical matter, many settlement proponents are finding that the process outlined under the *Criteria* takes a long time and that the Federal position on funding is very different than the levels of funding and non-Federal cost share that they had expected. In this situation settlement proponents have decided that their energies would be better spent convincing Congress to enact their settlement legislation without the support of the Administration. As this Subcommittee wrestles with these requests, we urge caution. The settlements that have been introduced in this Congress so far are still the tip of the iceberg. It is Interior's estimate that as many as 9 settlement bills may be introduced before this session ends. At this time, three of the anticipated 9 have been introduced and have already had hearings in the last year: authorizing legislation for the Duck Valley (S. 462/H.R. 5293), Soboba (H.R. 4841), and Navajo-San Juan (S. 1171/H.R. 1970) settlements.

Since 2002, three bills authorizing Indian Water Rights settlements have been enacted with either the full or qualified support of this Administration: Zuni (P.L. 108-34), Nez Perce (P.L. 108-447), and the Arizona Water Settlements Act (P.L. 108-451). We have testified in favor of a fourth settlement, the Soboba settlement (H.R. 4841), which we hope will be enacted shortly, and against authorizing legislation for two other settlements, the Navajo-San Juan (S. 1171/H.R. 1970) and Duck Valley (S. 462/H.R. 5293) settlements. Enactment of all 9 of the bills that are expected to be introduced this Congress with the funding levels being proposed by non-Federal settlement proponents would subject the Federal government to billions of dollars of additional authorizations.

In considering proposed settlements, we believe it is important to remember the dynamics of settlement. By this I mean that each enacted settlement establishes a benchmark that influences the course of ongoing settlement negotiations in other places. There are currently 19 Federal negotiation teams that have been established to support settlement negotiations, and we have received 7 requests for new teams and believe that more requests will be forthcoming. If this Congress were to proceed to enact numerous settlement bills over the Administration's objection with provisions, including cost share provisions, that are not consistent with the *Criteria*, it would be very difficult in the future for Federal negotiators to participate in settlement negotiations, set realistic expectations, and convincingly hold the line on settlement costs.

In closing, I would like to emphasize the commitment of the Department of the Interior to successful negotiation of these settlements. When nominating then-Governor Kempthorne to serve as the 49th Secretary of the Interior, President Bush specifically noted that one of Governor Kempthorne's qualifications to serve was his previous work to resolve a long-standing water rights issue, which was, of course the Nez Perce agreement in Idaho. The Secretary has made supporting the Indian water rights settlement negotiation process one of his priorities. His staff has travelled all over the West over the last two years to provide technical assistance and support to negotiating teams.

Secretary Kempthorne has personally directed these teams to engage closely in an effort to produce solid achievements rather than just maintain the status quo. To provide a secure foundation for these commitments, we are taking steps to establish the Indian Water Rights office permanently within the Office of the Secretary at the Department of the Interior. This would improve the institutional capacity of the office and confirm its importance to Interior programs and to the future of the West.

Madame Chairwoman, we appreciate your interest in Indian water rights settlements. We look forward to close cooperation with this Subcommittee over the coming year. This completes my statement. I am happy to answer any questions the Subcommittee may have.